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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,446	10/13/2000	Lary R. Larson	P-7927	1342

7590 02/14/2002

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EXAMINER

DROESCH, KRISTEN L

ART UNIT	PAPER NUMBER
3762	

DATE MAILED: 02/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/687,446	LARSON ET AL.
	Examiner	Art Unit
	Kristen L Drolesch	3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 January 2001.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 13 October 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 10 states in exact words the last two lines of claim 7, upon which claim 10 is dependent.
2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 27-28 have been renumbered 26-27.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The “peripheral edge along all or a portion of the first shell” is inferentially included but not positively recited rendering it unclear whether the “peripheral edge along all or a portion of the first shell” is to be covered within the scope of the claim. It is suggested to positively recite each element at the beginning of the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 7, and 10-13, are rejected under 35 U.S.C. 102(b) as being anticipated by Pless et al. (5,131,388). Pless et al. shows an IMD housing assembly (94) comprising a first shell (102) and a second shell (104); a battery enclosure comprising a cover (96) and all or a portion of the first shell; and electrochemical cell (30a, 30b) provided in the battery enclosure; electronic circuitry (100) provided between the cover of the battery enclosure and the second shell (104); a hermetic seal provided between the cover of the battery enclosure and all or the portion of the first shell. (Fig. 5).

Regarding claim 2, Pless et al. shows the hermetic seal comprises a weld joint between the cover (96) and all or the portion if the first shell (102) (Col. 5, lines 12-14).

With respect to claims 7 and 10, Pless et al. shows the first shell comprises a substantially straight peripheral wall portion, and the cover (96) comprises a peripheral edge (Fig. 5) and a hermetic seal comprising a weld joint between the peripheral edge of the cover and a substantially straight peripheral wall portion of the first shell (Col. 5, lines 12-14).

Regarding claims 11-12, Pless et al. shows the cover comprises a substantially straight peripheral wall portion, and the hermetic seal comprises a standing edge weld joint between the substantially straight peripheral wall portion of the cover and the substantially straight peripheral wall portion of the first shell (Fig. 5).

With respect to claim 13, Pless et al. shows the cover is a formed cover.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pless et al. (5,131,388). Pless et al. is as explained before. Pless et al. discloses the claimed invention except for the hermetic seal comprising a butt weld joint, a tumble weld joint, or a spanked weld joint. It would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to modify the weld joint as taught by Pless et al. with a butt weld joint, a tumble weld joint, or a spanked weld joint, since applicant has not disclosed that these particular weld joints provide any criticality and /or unexpected results and it appears that the invention would perform equally well with any weld joint such as the weld joint taught by Pless et al for hermetically sealing the cover (96) to the first shell (102).

9. Claims 6, 14-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Pless et al. (5,131,388). Pless et al. is as explained before. Pless et al does not show the cover comprises a coined edge and the hermetic seal comprises a butt or tumble weld joint between the coined edge of the cover and a substantially straight peripheral wall portion of the first shell. It would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to modify the cover and weld joint as taught by Pless et al. with a cover with a coined edge and a butt or tumble weld joint between the coined edge and first shell, since applicant has not

disclosed that this particular cover configuration and weld joints provides any criticality and /or unexpected results and it appears that the invention would perform equally well with any cover configuration and weld joint such as the cover configuration and weld joint taught by Pless et al for hermetically sealing the cover (96) to the first shell (102).

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pless et al. (5,131,388). Pless et al. is as explained before. Pless et al does not show the substantially straight peripheral wall portion of the first shell comprises a ledge, which the peripheral edge of the cover engages. It would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to modify the peripheral wall portion of the first shell as taught by Pless et al with a first shell having a ledge, since applicant has not disclosed that this particular first shell configuration provides any criticality and /or unexpected results and it appears that the invention would perform equally well with any first shell configuration such as the first shell configuration taught by Pless et al. for hermetically sealing the implantable medical device.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pless et al. (5,131,388). Pless et al. is as explained before. Pless et al does not show the hermetic seal comprises a spanked edge defined between the peripheral edge of the cover and the substantially straight peripheral wall portion of the first shell. It would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to modify the peripheral edge of the cover and substantially straight wall portion of the first shell as taught by Pless et al. with a spanked edge defined between the peripheral edge of the cover and the substantially straight peripheral wall portion of the first shell, since applicant has not disclosed that this

particular cover and first shell configuration provides any criticality and /or unexpected results and it appears that the invention would perform equally well with any cover and first shell configuration such as the cover and first shell configuration taught by Pless et al. for hermetically sealing the implantable medical device.

12. Claims 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pless et al. (5,131,388). Pless et al. is as explained before. Pless et al does not show the first shell comprising a first substantially straight peripheral wall portion and a second substantially straight peripheral wall portion adjacent the first substantially straight peripheral wall portion, and the second substantially straight peripheral wall portion being offset relative to the first substantially straight peripheral wall portion. It would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to modify the first shell as taught by Pless et al. with a first substantially straight peripheral wall portion and a second substantially straight peripheral wall portion adjacent the first substantially straight peripheral wall portion, and the second substantially straight peripheral wall portion being offset relative to the first substantially straight peripheral wall portion, since applicant has not disclosed that this particular first shell configuration provides any criticality and /or unexpected results and it appears that the invention would perform equally well with any first shell configuration such as the first shell configuration taught by Pless et al. for hermetically sealing the implantable medical device.

Regarding claim 19, Pless et al does not show that the cover is a stamped cover. It would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to modify the cover as taught by Pless et al. with a stamped cover since applicant has not disclosed that this particular first shell configuration provides any criticality and /or

unexpected results and it appears that the invention would perform equally well with any cover such as the cover taught by Pless et al. for hermetically sealing the battery.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen L Drosch whose telephone number is 703-605-1185. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes can be reached on 703-308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Kristen Drosch*

kld  
February 10, 2002

*Kennedy Schaezle*

KENNEDY SCHAEZLE  
PRIMARY EXAMINER

2-10-02